

of the State concerning liquidation of the business and assets of an insolvent local corporation. The question was whether, under the peculiar circumstances disclosed, the federal court should retain jurisdiction; its power generally to render judgment *in personam* against fiduciaries appointed by state courts was expressly recognized. Here there are no extraordinary circumstances. As contemplated by Congress the Receiver sought an adjudication of his rights. The final decree produced no interference with the trustee's possession, nor with the power of the Orphans' Court to order distribution of assets. The Receiver's privilege to participate has been declared; only a judgment *in personam* was rendered.

Congress has empowered Receivers of National Banks to sue in federal courts; the obvious importance of permitting them freely to do so cannot be disregarded.

All necessary parties were brought before the trial court. The claim to the contrary is without merit.

The challenged decree is

*Affirmed.*

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GEORGIA RAILWAY & ELECTRIC CO. ET AL. v.  
DECATUR.

APPEAL FROM THE SUPREME COURT OF GEORGIA.

No. 625. Argued March 9, 1936.—Decided March 30, 1936.

1. This Court reversed the judgment of a state court, at a former hearing, upon the ground that a statute of the State, as apparently construed by that court, deprived the complaining party of property without due process of law; and by its mandate remanded the cause to the state court for further proceedings not inconsistent with this Court's opinion. *Held* that the state court was not inhibited by the mandate from restating its construction of the statute so as to avoid the constitutional objection, and from enforcing the statute as thus explained. P. 628.

2. A State may assess paving costs without regard to benefits, against street railroads occupying the streets paved, while others are assessed only on the basis of benefits. P. 624.
  3. Constitutional objections must be properly presented to the state court as a basis for their review in this Court. P. 625.
- 181 Ga. 187; 182 S. E. 32, affirmed.

APPEAL from a decree sustaining a special paving assessment against a street railway company. The case was here on a former appeal, 295 U. S. 165.

*Mr. Walter T. Colquitt* for appellants.

This Court has jurisdiction only over final decisions of the highest state court. Therefore, whatever was before this Court for decision and was considered, passed upon and decided, is final and conclusive, and becomes the law of the case.

No question, once considered and decided by this Court, can be reëxamined at any subsequent stage of the same case.

A *praecepe* which directs the state court to proceed consistently with the opinion of this Court has the effect of making the opinion a part of the mandate, as though it had been therein set out at length.

A decision rendered by a majority of this Court is as effective as if all the Justices had concurred therein. A dissenting opinion merely shows that the questions therein discussed were before the Court and were considered and determined by the Court in the decision rendered in the case.

The mandate of this Court directed "that the decree of the said Supreme Court [of Georgia] in this cause be, and the same is hereby reversed." When, on the same record, the Supreme Court of Georgia rendered a judgment of affirmance, it did not comply with the mandate.

The opinion of this Court was that the Georgia assessment statutes in question contemplate "the existence of

benefits to the railway company as the basis for the assessment." This Court's construction of said statutes is final and will not be altered, changed or reversed, in the same case, by this Court after the term in which its decision has been rendered.

When this Court adjudicates that a state statute has been construed by the highest court of the State in a certain way, the determination of such question is final and conclusive and the law of the case.

Police power is subject to constitutional limitations, and a party is entitled to a judicial hearing to determine whether or not it has been arbitrarily or unreasonably exercised.

In the previous litigation no claim was made by the municipality that appellants were estopped from contesting their liability therefor. No issue or claim of estoppel was raised or made by the municipality in the present litigation.

The municipality is judicially estopped from claiming an estoppel.

Appellants were given no hearing and no opportunity to be heard on the question of estoppel. The issue of estoppel was not raised by the pleadings. Under the due process clause of the Federal Constitution, appellants are entitled to a notice and a hearing on material issues.

*Mr. James A. Branch*, with whom *Messrs. William Schley Howard* and *Scott Candler* were on the brief, for appellee.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

April 29, 1935 (295 U. S. 165), we reversed the decree pronounced by the Supreme Court of Georgia in this cause, September 18, 1934 (179 Ga. 471; 176 S. E. 494), and sent it back for further proceedings not inconsistent

with the accompanying opinion. That opinion discloses the circumstances of the litigation and our reasons for reversal.

After notice to the parties, the Supreme Court, with felicitous recognition of obligation to do nothing in conflict with the ruling here, again considered the original record. September 30, 1935, after disclaiming any purpose theretofore to construe the pertinent state statutes as unhappily chosen words had led us to conclude, it announced their meaning and once more affirmed the decree of the trial court. A second appeal gives us jurisdiction.

Appellants insist, first, that the decree presently challenged is not consistent with our opinion and mandate; and, second, that, if the Georgia statutes be construed and applied as finally ruled by her Supreme Court, they will be deprived of equal protection and due process of law, contrary to the Fourteenth Amendment.

As appears from our opinion of April 29, 1935, following long established doctrine, we accepted the construction of the statutes placed upon them by the Supreme Court and decreed accordingly. *Elmendorf v. Taylor*, 10 Wheat. 152, 159; *Chicago, M., St. P. & P. R. Co. v. Risty*, 276 U. S. 567, 570. So regarded, they empowered the municipality to assess paving costs against the utility only upon the basis of benefits received. And, as appellants had been deprived of opportunity to show the absence of advantage, we held due process of law had been denied.

After the first decree was reversed and set aside, the cause went back for disposition by the Supreme Court. Our mandate restricted its powers in that regard so far as necessary to prevent conflict with rulings here, but not otherwise. Only federal questions were open for our determination. We accepted the construction placed upon the statutes by the Supreme Court and held that so

to apply them would deprive appellants of a federal right. We suggested no interpretation of our own, and did not affirmatively indicate the further action to be taken. *Schneider Granite Co. v. Gast Realty Co.*, 245 U. S. 288, 291. The decree now under consideration is not in conflict with anything said or done by us. Appellants' claim to the contrary is not well founded. Without exceeding the limitations prescribed, the Supreme Court reconsidered the cause, put its own construction upon the statutes, and adjudged accordingly.

In the circumstances disclosed by the record, will appellants be deprived of the equal protection or due process of law if the state statutes, as finally interpreted, are applied to them?

Upon this point, counsel submit:—Under the statutes as construed, other parties would be subject to assessment by the municipality for the cost of paving only upon the basis of benefits; appellants would be liable without regard thereto. Street railways are entitled to the same constitutional protection accorded to others. Also, that if the special assessment was product of the police or taxing power, the utility was entitled to a judicial hearing in respect of its unreasonable or arbitrary exercise.

Considering our declarations in *Durham Public Service Co. v. Durham*, 261 U. S. 149, 154, that "There are obvious reasons for imposing peculiar obligations upon a railway in respect of streets occupied by its tracks," we cannot say the Supreme Court erred in concluding there was no violation of the equal protection clause. *Fort Smith Light Co. v. Paving District*, 274 U. S. 387.

The power of the municipality to require a street railway to pave streets used by it, without regard to benefits, is clear enough. *Durham Public Service Co. v. Durham*, *supra*; *Southern Wisconsin Ry. Co. v. Madison*, 240 U. S. 457, 461. The court below recognized the general right

to demand inquiry concerning arbitrary exercise of the taxing or police power, when adequately alleged. But it found that appellants had not set up that defense, except as implied in the claim that any assessment not based on benefits was arbitrary and unreasonable. The court, we think, correctly said—

“There is no question as to the regularity of the assessment under the general law of the State, and the charter of the city as amended, and the ordinances duly enacted thereunder. It has already been determined that the paving was done and that the assessment therefor was made in conformity to the law. Payment therefor is undertaken to be avoided by the power company on the ground that the pavement was of no benefit to the company. It has been held by this court, in construing the law of the State in reference to street paving and cost thereof, that a street railway could not defend against the payment on the ground of no benefit.”

Appellants have failed to show deprivation of any federal right through denial of opportunity to rely upon an adequate defense, properly advanced. We need not, therefore, consider the conclusions of the Supreme Court concerning an estoppel.

The questioned decree must be

*Affirmed.*